

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KELLY D. TITCHENELL, Administratrix of the  
Estate of Diania L. Kronk, deceased,

Plaintiff,

v.

GREENE COUNTY; and RICHARD "RICHIE"  
POLICZ, individually and as an employee of  
Greene County Emergency Management/911  
Communications Center; and GREG  
LEATHERS, individually and as an employee of  
Greene County Emergency Management/911  
Communications Center; and LEON PRICE,  
individually and as an employee of Greene  
County Emergency Management/911  
Communications Center, Individually and  
Severally,

Defendants.

CIVIL ACTION-LAW

No. 2:22-cv-00890-MRH

CHIEF JUDGE MARK R. HORNAK

***Electronically Filed***

**JURY TRIAL DEMANDED**

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT  
TO RULE 12(b)(6) AND MOTION TO STRIKE PURSUANT TO RULE 12(f)**

AND NOW, come Defendants, COUNTY OF GREENE, PENNSYLVANIA, RICHARD POLICZ,  
and GREG LEATHERS, individually and in their capacities as employees of Greene County  
Emergency Management, by and through their undersigned counsel, JonesPassodelis, PLLC, and  
file the within Motion to Dismiss Plaintiff's Complaint Pursuant to Rule 12(b)(6) and Motion to  
Strike Pursuant to Rule 12(f), averring as follows:

1. The Second Amended Complaint pleads civil rights and pendent state common law claims arising out of a 911 call that did not result in an ambulance being sent. The facts relevant to Plaintiff's claims are set forth in the accompanying Brief in Support.

2. The Second Amended Complaint pleads causes of action of substantive and procedural due process (Counts I and II), a *Monell* claim (Count III), and pendent state common law claims for intentional infliction of emotional distress (Count IV), wrongful death (Count V) and survival (Count VI).

3. Defendants Policz is not a proper party to this action. His liability is premised on supervisory liability regarding Defendant Price's actions, however, Policz had no authority over Price.

4. Additionally, Plaintiff fails to state a claim for a violation of her due process rights in that there is no constitutional right to an emergency response. *See Deshaney v. Winnebago County Dep't. of Social Servs*, 489 US 189 (1989).

5. The Second Amended Complaint fails to plead a claim for supervisory liability against either Defendant Leathers or Defendant Policz.

6. Likewise, it fails to plead a Monell claim. Mr. Price did not violate Plaintiff's civil rights. Even if he did, County policy and custom did not cause a violation. To the contrary, the facts alleged make clear it would have prevented a violation.

7. Additionally, Plaintiff's state law claims are barred by the Pennsylvania State Tort Claims Act. This includes the claims against Greene County and the individual defendants in their official capacities.

8. Plaintiff has failed to allege sufficient facts to support a claim of Intentional Infliction of Emotional Distress in their personal capacities. The Second Amended Complaint fails to allege facts supporting a claim that Ms. Kronk was aware of the alleged violation of her rights or that she suffered any distress related thereto and should therefore be dismissed.

9. Counts V (survival) and VI (wrongful death) should be dismissed because neither are substantive causes of action. *See Mallet v. Johnstown Police Department*, 2019 WL 2435869 at \*5 (W.D. Pa. June 11, 2019); *Salvio v. Amgen, Inc.*, 810 F. Supp. 2d 745, 757 (W.D. Pa. 2011).

10. Plaintiff's claim for punitive damages against Greene County and its employees in their official capacities are unavailable as a matter of law under federal or state law. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981); 42 Pa. C.S. § 8553.

11. Second Amended Complaint does not plead facts sufficient to impose punitive damages against Defendants Leathers and Policz in their personal capacities.

12. In Plaintiff's Second Amended Complaint, a series of immaterial facts were raised, including hiring practices of Greene County and salaries of their 911 operators.

13. Defendants move to strike the immaterial portions of Plaintiff's Second Amended Complaint, namely paragraphs 61-67.

WHEREFORE, Defendants, GREENE COUNTY, RICHARD POLICZ, and GREG LEATHERS, respectfully request that this Honorable Court grant this Motion to Dismiss.

**JURY TRIAL DEMANDED**

Respectfully submitted,

JONES PASSODELIS, PLLC

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Counsel for Defendants,  
GREENE COUNTY, RICHARD POLICZ  
and GREG LEATHERS

**CERTIFICATION**

As counsel for the moving party, I certify that counsel for Defendants have made a good faith effort to confer with Plaintiff's counsel pursuant to the Court's Standing Order and Procedures Re: Civil Motion Practice.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been forwarded to counsel of record by:

\_\_\_\_\_ U.S. First Class Mail, Postage Paid  
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Date: September 23, 2024

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